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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CHAPMAN JR, JOHN E

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,330

Applicant(s)

MALAMETZ, DAVID L.

Examiner

John E Chapman

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4 is/are rejected.
- 7) ☒ Claim(s) 3 and 5 is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/15/03; 12/2/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-5, drawn to a serpentine flexure, classified in class 248, subclass 628.
 - II. Claims 6-20, drawn to a moveable proof mass, classified in class 73, subclass 514.38.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because claim 9, for example, does not require a serpentine flexure comprising a plurality of flexure members. The subcombination has separate utility such as supporting a MEMS device comprising a mirror.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Rupnick on January 25, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-5.

Affirmation of this election must be made by applicant in replying to this Office action. Claims

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6-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.¹

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Samuels et al.

Samuels et al. disclose a micro-machined electromechanical sensor (MEMS) device comprising serpentine flexures 414, 416 in Fig. 4.

Regarding claim 2, control structures 432-440 comprise a means for internally caging the flexures members.

Regarding claim 4, flexure 414 is resiliently flexible laterally in Fig. 4, while flexure 416 is resiliently flexible vertically in Fig. 4.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tang et al.

¹Claims 6-8 are withdrawn, since claim 4 is not found to be allowable. If claim 4, from which claims 6-8 depend, is subsequently found to be allowable, rejoinder of claims 6-8 will be considered.

Tang et al. disclose a micro-machined electromechanical sensor (MEMS) device comprising a serpentine flexure in Fig. 9.

8. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sakai et al. (published on Oct. 4, 2001).

Sakai et al. disclose a micro-machined electromechanical sensor (MEMS) device comprising a serpentine flexure 220 in Fig. 10.

9. Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kleytman.

Kleytman discloses a micro-machined electromechanical sensor (MEMS) device comprising a serpentine flexure in Fig. 11.

Regarding claim 4, the flexure members are resiliently flexible in the direction D in Fig. 13, which is crosswise to their longitudinal axes.

10. Claims 3 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Howe et al. disclose flexure members 42 and 46, wherein an extension 52 is formed on one end of flexure member 42 and extends a part of the distance to flexure member 46.

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Schmiesing et al. disclose a folded or bent beam 140, wherein protrusions 141 extend from the surface of the beam.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John E Chapman whose telephone number is (571) 272-2191. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


John E Chapman
Primary Examiner
Art Unit 2856